

FINDING OF EMERGENCY

Emergency promulgation of these regulations is necessary for the immediate preservation of the public peace, health and safety, and the general welfare. The following facts provide the basis for the finding of emergency:

Penal Code sections 12087 through 12088.9 became effective January 1, 2000. These statutes require the Attorney General to do the following by the specified dates:

- January 1, 2000
Commence development of regulations to implement minimum safety standards for firearms safety devices and gun safes to significantly reduce the risk of firearms-related injuries to children 17 years of age and younger and access by unauthorized persons.
- January 1, 2001
Adopt and issue regulations implementing the firearms safety device and gun safe standards and report to the Legislature on these standards. The Department of Justice (DOJ) is required to certify laboratories to test devices to determine whether they fall within the standards.
- July 1, 2001
Compile, publish, and thereafter maintain a roster listing all of the safety devices that have been tested by a certified testing laboratory, have been determined to meet the department's standards for firearms safety devices, and may be sold in this state.
- January 1, 2002
Ensure that the final regulations establishing firearms safety device and gun safe standards are in place. Any firearm sold or transferred in this state by a licensed firearms dealer, including private party transfers through a dealer, and all firearms manufactured in this state shall include or be accompanied by a firearm safety device that is listed on the Department of Justice's roster of approved firearms safety devices unless the purchaser owns a gun safe that meets standards specified by the DOJ. Only firearms safety devices that have been tested and found to pass standards developed by the DOJ may be placed on the roster.

These emergency regulations are essential so that the DOJ can formalize the required standards for firearms safety devices and gun safes by the statutorily required time, distribute and review laboratory applications, perform laboratory certification inspections, and certify qualified laboratories as soon as possible. These emergency regulations are also essential to allow sufficient time for: 1) Laboratories to manufacture the required equipment; 2) Laboratories to undergo the application and certification process; 3) Certified Firearms Safety Device (FSD) Laboratories to complete the required tests and report certified firearms safety devices to the DOJ; and 4) the DOJ to analyze the test reports and publish the roster of certified safety devices by the **July 1, 2001**, deadline.

While the DOJ intended to follow the mandate of the enabling legislation to begin development of the standards and regulations in January of 2000, the annual deficiency legislation, which funds new legislative mandates outside of the normal state budget process, did not pass for

the year 1999-2000. As a result, the DOJ had neither official staff resources nor hiring authority to begin work on these regulations until the normal budget cycle commenced on July 1, 2000. This caused a six-month delay in the DOJ efforts to begin development of these regulations. Pursuant to the time limits in the bill, the DOJ had six months to conduct research, develop objective testing standards and methodology, and undergo the normal regulation adoption process. Completion of all of these activities require more than the six months available to the DOJ through the regular rulemaking process.

Due to circumstances outlined in the previous paragraph, the DOJ is now awaiting the Office of Administrative Law's approval of the required standards and regulations for laboratory certification, firearms safety devices, and gun safes. Without emergency regulations, the DOJ will not meet the July 1, 2001, roster publication deadline mandated by law. Regulations establishing firearms safety device and gun safe standards, laboratory certification criteria, and testing procedures must be in place before certified laboratories can begin testing firearms safety devices.

Once laboratory certification criteria and procedures are established, considerable time must be devoted by the DOJ to review and analyze laboratory applications to ensure that the laboratories are truly qualified and independent. Additionally, the DOJ must inspect each laboratory testing facility to ensure that these facilities have adequate security protocols to protect against loss or theft of guns and also to ensure that each laboratory possesses adequate staffing and the required equipment to complete the testing safely and accurately.

If these regulations are not granted emergency status and the firearm safety device testing program is not implemented in a timely manner, firearms manufacturers and dealers may be forced to liquidate their inventories under market conditions that will become increasingly unfavorable as the January 1, 2002 deadline approaches. The forced liquidation of inventory will create financial hardships and losses for California's firearms industry. Additionally, interstate commerce will be adversely impacted as it relates to national and international firearm manufacturers and importers whose firearms could not be sold in this state if no suitable firearms safety devices for their firearms are approved.

Additional reasons for granting these regulations emergency status are safety-related. Poorly made firearms safety devices and gun safes constitute threats to public safety. Granting these emergency regulations will help reduce these threats by increasing the overall quality of firearms safety devices available. The risk of serious personal injury or death should be reduced as devices that are physically unsafe are removed from the market. The earlier these regulations are implemented the sooner they can protect the public.

Granting emergency status to these regulations will allow the DOJ to begin certifying laboratories and preparing the roster for publication while the rulemaking process is occurring. The DOJ also realizes that if the required rulemaking process is not completed within the required 120-day time period, these regulations will be automatically repealed. With these facts in mind, the DOJ has developed preliminary device and laboratory certification standards and has begun the process of preparing the required rulemaking documents. It bears repeating that any delay in implementing the regulations relating to laboratory certification and firearms safety device testing will adversely affect the public's health, safety, and welfare for all of the reasons set forth in this finding of emergency.

Therefore, the DOJ finds that the adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, or general welfare. These emergency regulations will be effective immediately.

AUTHORITY AND REFERENCE

The DOJ adopts these regulations that add Chapter 12.6, sections 977.10 through 977.90 of Title 11 of the California Code of Regulations, pursuant to sections 12087 through 12088.9 of the Penal Code.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Penal Code sections 12087 through 12088.9 require the DOJ to develop safety standards for firearms safety devices and gun safes, to certify independent laboratories to conduct testing of firearms safety devices, and to establish and maintain a roster of firearms safety devices that have been tested and certified. Commencing January 1, 2002, these Penal Code sections prohibit the manufacture or sale of a firearm unless accompanied by a DOJ-approved safety device.

This law additionally requires the packaging and descriptive materials accompanying any firearm sold or transferred in this state or delivered for sale by a manufacturer in this state to bear a label with a specified warning statement. If the firearm is sold or transferred without accompanying packaging, the warning label must be affixed to the firearm itself in a manner prescribed by regulation of the Attorney General. Furthermore, this law requires firearms dealers, commencing 1/1/2002, to sell a DOJ-approved safety device with every firearm.

The authorizing statute also requires the DOJ by January 1, 2001, to certify independent testing laboratories to test firearms safety devices; provides for the testing of firearms safety devices by such laboratories; and produce a roster listing all models of devices that have passed testing. The DOJ is also required to set standards for gun safes and firearms safety devices, and develop testing standards relative to firearms safety devices.

The authorizing statute specifies that its provisions do not apply to the commerce of any antique firearm, as defined, nor do they apply to the commerce of any firearm intended to be used by a salaried, full time peace officer.

Penal Code sections 12087 through 12088.9 expressly require the DOJ to adopt regulations to comply with the mandates of this statute. Such regulations must establish procedures for laboratory certification, establish firearm safety device and gun safe testing and reporting standards, provide for the establishment and maintenance of the roster of certified devices, and set fees for initial and renewal laboratory certifications.

The DOJ has developed a series of regulations to specify firearm safety device and gun safe standards and to establish the process for certifying laboratories to enable the laboratories to conduct tests to determine whether firearms safety devices meet the specified standards. The regulations further the certification process by identifying the qualifications and methods of operation for laboratories, and the method for reporting test results to the DOJ. In addition, the

regulations set forth the process for establishing, publishing, and maintaining a roster of certified firearm safety devices.

The emergency regulations will add Chapter 12.6, sections 977.10 through 977.90, to Division 1, Title 11, of the California Code of Regulations.

Section 977.10 states the title and scope of the proposed regulations.

Section 977.15 sets forth time extensions for compliance to be granted at the discretion of the DOJ.

Section 977.20 defines terms used in the laboratory certification process, firearms safety device testing and approval, and roster creation and maintenance.

Section 977.30 specifies who must be certified by the DOJ as a testing laboratory. Any laboratory wishing to participate in the testing program and any proposed change in the ownership of five percent or more requires a new application for DOJ certification.

Section 977.31 specifies the requirements for applications for laboratory certification including information relating to: the laboratory; Certificate of Eligibility (COE) holder(s); ownership; facility management and testing supervision; required equipment; off-site location; authorized representative; conflicts of interest; certifications relating to prohibited persons; and possession of equipment.

Section 977.32 identifies the requirements that must be met in order to qualify for certification. These requirements include: one or more of the owner(s), chief executive officer(s), or person(s) with primary responsibility for the operation of the applicant laboratory must apply for and obtain a COE; the abilities and equipment an applicant must have and demonstrate in order to be certified; and that the laboratory demonstrate its possession of all necessary equipment and its ability to properly conduct all of the required tests and procedures.

Section 977.33 specifies the grounds for which an application shall be denied, the method of notifying the applicant if his or her application is denied, the method and time frame for requesting a hearing, and the consequences of failing to request a hearing or withdrawing an appeal.

Section 977.34 specifies the certification term for a Certified FSD Laboratory as two years.

Section 977.35 specifies the time periods within which the DOJ must inform an applicant: that his or her application is either complete or deficient; to schedule and complete the on-site inspection; and complete the processing of the application. This section applies to both initial and renewal applications. This section also specifies the minimum, median, and maximum processing times for initial and renewal applications for certification as a Certified FSD Laboratory.

Section 977.36 establishes an applicant's recourse if the DOJ fails to complete processing of a completed application within specified time standards, and requires that information regarding this process be included on the application.

Section 977.40 requires a Certified FSD Laboratory to ensure that there are no conflicts of

interest regarding the ownership, relationships, licensing, and financial involvements and/or interests of specified persons related to the Certified FSD Laboratory.

Section 977.41 requires a Certified FSD Laboratory to have written security procedures if firearms are to be stored and/or transported by the laboratory and for the laboratory to meet security and safety requirements regarding: storage and transportation of firearms and ammunition; firearm inventory control requirements and reporting requirements for lost/stolen firearms; use of safety equipment; laboratory design and operation; safe firearms handling and operation, including a requirement that no live ammunition be present in the testing area during testing; and posted warnings.

Section 977.42 requires a Certified FSD Laboratory to meet licensing and minimum standards regarding: complying with all applicable federal, state, and/or local laws; ensuring that any required licensing and/or approvals have been obtained and are maintained; informing staff of applicable laws relating to firearms possession prohibitions and ensuring that such persons do not possess firearms; and possessing, maintaining, and calibrating required equipment.

Section 977.43: restates and clarifies which firearms safety devices must be tested; identifies the consequences of post-certification modifications to a model; requires that four firearms safety devices of each model shall be submitted to the laboratory for testing; allows the submission of any information that may be needed for proper and safe operation of the firearms safety device; requires the manufacturer or importer to provide specific information; and sets forth the provisions where firearms safety devices may be approved without testing if they differ only superficially from devices from the same manufacturer that have already approved and requires as a condition listing of such an untested device that the manufacturer or dealer provide the DOJ with a sample of the device for evaluation.

Section 977.44 prescribes standards for firearms safety devices, specifying that devices shall be of a design that requires removal or deactivation to be by a unique method of access intended by the manufacturer within the standards set forth in these regulations; combination locking systems shall have at least 1,000 possible combinations consisting of at least three numbers, letters, or symbols per combination; that key locking systems be unique to the manufacturer's firearms safety device; that the firearms safety device renders the firearm inoperable while installed; that the firearms safety devices must function under specific methods and specifying those methods; and specifying that a firearms safety device must be capable of repeated use and shall pass the testing procedures described in these regulations.

Section 977.45 specifies: that the tests provided in this section are designed to replicate the forces that would be exerted through the use of common household tools for an approximate ten-minute period; that only employees of the Certified FSD Laboratory are allowed to conduct firearms safety device testing; that representatives of the DOJ, manufacturer, or dealer shall be allowed to be present during testing but may not participate in the testing; the tolerances, equipment, procedures, and requirements for conducting each of the required tests; the requirement that the a firearms safety device shall not be of a design to allow it to be disabled or removed from the firearm through the partial destruction of the firearm; the criteria for primed cases to be used; a requirement that for each test, the firearm be cocked and that the manual safety not be applied; a description of each test and what constitutes passing or a failure of each test, and a provision that failure of any test constitutes a failure of the complete test.

Section 977.46 requires: that laboratories report to the DOJ the results of tests that certify a firearm safety device model meets the required standards and has passed the required testing; requires laboratories to submit the drop-tested firearm safety device to the DOJ; identifies the submission requirements for the report including the time frame for submission; provides that a late report does not invalidate the results of the test; prohibits a manufacturer or importer from claiming its device(s) has passed the required testing until the DOJ has issued a letter of compliance for that model; specifies a compliance statement that may be placed on user information supplied by the manufacturer or dealer of the firearms safety device; and requires the manufacturer or dealer of a firearms safety device approved under these regulations to specify, in the packaging or descriptive materials accompanying the device, those firearms for which the device meets the standards and is capable of passing the testing described in these regulations.

Section 977.47 specifies: the record keeping requirements for Certified FSD Laboratories including: the elements of a Firearms Safety Device Compliance Test Report and the retention periods for the records used to complete the Report; a requirement that current records relating to off-site facilities, security systems, employees directly involved in firearms safety device testing, and ownership be maintained by the laboratory; and the information which must be reported to the DOJ within ten days of any change.

Section 977.48 specifies the conditions under which an applicant or certified laboratory would be allowed to use an off-site location. If more than one off-site location is needed, this regulation specifies the method for identifying any such location. It also specifies the conditions which would cause the DOJ to prohibit the use of an off-site location.

Section 977.49 specifies that: duly authorized DOJ representatives must be allowed to inspect the facilities and records of Certified FSD Laboratories and to observe firearms safety device testing; the DOJ will conduct an on-site inspection within six months of certification; the method for notifying a laboratory of any violations that have been noted and what must be done to correct any violations; the time frame and method for ensuring that any required corrective action has been completed; and a requirement that the Certified FSD Laboratory must submit a monthly schedule of the days on which testing is planned.

Section 977.50 sets forth standards for gun safes, including: that the gun safe is able to fully contain firearms and provide for their secure storage; that the device have a locking mechanism consisting of a combination or electronic tumbler of at least 10,000 possible combinations, consisting of a minimum of four numbers, letters, or symbols; that the gun safe have a locking system consisting of at least four locking bolts of at least one-half inch thickness that penetrate the body of the safe from the door, or that penetrate the door from the body; and that the exterior wall be constructed of a minimum one-eighth inch steel or a material of equivalent strength.

Section 977.51 defines satisfactory evidence of gun safe ownership as: a receipt or affidavit of ownership, plus an affidavit signed under penalty of perjury that identifies the gun safe by make and model; states that the gun safe is capable of accommodating the firearm being purchased; and states that the gun safe meets the standards for gun safes described in section 977.50 of these regulations.

Section 977.60 specifies: that a Firearms Safety Device Laboratory Certification is subject to suspension or revocation; the grounds for suspension or revocation; the consequences of suspension or revocation; and the manner in which a suspension or revocation will be handled.

Section 977.70 establishes the renewal procedures for Firearms Safety Device Laboratory Certification and that failing to renew a Firearms Safety Device Laboratory Certification will result in expiration of the laboratory's certification.

Section 977.71 establishes the procedures for certification after expiration of an FSD Laboratory Certification and that these procedures include undergoing the complete application process.

Section 977.80 informs applicant and Certified FSD Laboratories that the address that the DOJ will use for sending or transmitting notices, orders, and communications will be the address submitted by the laboratory on the Application for Firearms Safety Device Laboratory Certification. This section also states the methods by which notices, orders, and communications may be sent, and when any time period specified in any such notice or order will commence to run.

Section 977.90 specifies: that within ten days of receipt of the required test report and specified documentation, the DOJ will determine whether a firearms safety device model is approved; within ten days of receipt of a request, that the DOJ shall make a determination and the circumstances under which the DOJ may make a determination to approve a firearms safety device without separate testing; the circumstances under which the DOJ will remove a firearms safety device from the roster; and the process for continuing a firearms safety device listing under specified conditions.

DISCLOSURES AND DETERMINATIONS REGARDING THE REGULATIONS

1. Fiscal impact on Public Agencies: None.
2. Cost to any local agency or school district which must be reimbursed in accordance with Government Code Section 17561: None.
3. Other non-discretionary cost or savings imposed upon local agencies: None.
4. Cost or savings in federal funding to the state: None.
5. Cost impact on private persons or directly affected businesses: Certified FSD Laboratories will need to purchase and build appropriate equipment to conduct the required tests. Equipment costs may vary, but are estimated at \$12,000.
6. Significant adverse effect on business including the ability of California businesses to compete with businesses in other States: None.
7. Significant effect on housing costs: None.
8. Alternatives considered: The DOJ has determined that no alternative it has considered would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action and regulations.
9. Local Mandate Determination: DOJ has determined that these emergency regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

In accordance with Government Code Section 11346.3, the following are required responses as State agencies proposing to adopt or amend any administrative regulations shall assess whether and to what extent it will affect the following:

- (a) The creation or elimination of jobs within the State of California: Minimal increase.
- (b) The creation of new businesses or the elimination of existing businesses with the State of California: Minimal increase.
- (c) The expansion of businesses currently doing business with the State of California: Minimal.